IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

WP(C).No. 28782 of 2007(B)

PETITIONER:

BHAGAVAT SINGH,
AISWARYA, NEDUNGOLAM P.O.,
NOW RESIDING AT "SAROJ GANGA",
NEDUNGOLAM P.O., KOLLAM.

BY ADV. SRI.G.BHAGAVAT SINGH (PARTY-IN-PERSON)

RESPONDENTS:

DAMAYANTHI SUSEELA,
SANJAY BHAVAN, NEDUNGOLAM,
PARAVOOR VILLAGE, KOLLAM.

BY ADV. SRI.C.UNNIKRISHNAN (KOLLAM)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 28782/2007 b

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE IA NO. 1206/2005 FILED BY THE RESPONDENT HEREIN BEFORE THE MUNSIFF MAGISTRATE COURT, PARAVOOR.

EXT.P2. COPY OF THE ORDER DT. 8/6/07 IN IA NO. 1206/2005 BY THE MUNSIFF MAGISTRATE COURT, PARAVOOR.

EXT.P3. COPY OF THE COMMON JUDGMENT DT. 24/7/2007 IN WPC NOS. 19820/2007 AND 21099/2007 BY THIS COURT.

EXT.P4. COPY OF THE PRELIMINARY REPORT SUBMITTED BY THE ADVOCATE COMMISSIONER A.R. SAJJU, DT. 20/9/07.

EXT.P5. COPY OF THE ORDER DT. 24/09/07 REVIEWING THE EARLIER ORDER OF IA NO. 1206/2005 & IA NO. 1166/2007 OF MUNSIFF MAGISTRATE COURT, PARAVOOR.

RESPONDENT'S EXHIBITS **NIL.**

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M.N.KRISHNAN, J

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W.P.(C) No.28782 OF 2007

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Dated this the 29th day of October 2007

JUDGMENT

This writ petition is filed challenging Ext.P5 order passed by the Munsiff-Magistrate Court, Paravur in I.A.Nos.1206 & 1166 of 2005 in O.S.No.109 of 2005. By the said order, the learned Munsiff appointed one Adv.V.Jayasuresh to ascertain the matters sought for in the above I.As. Aggrieved by that decision, the respondent in I.A.No.1206 of 2005 has come up with this writ petition. By a considered order on 24.7.2007, I allowed the application for amendment and directed the court below to consider the issuance of a Commission, if it is found that they are to be set aside. Now as on today also in both the suits, the applications are pending for setting aside the Commissioners' reports. Irrespective of the question whether they are liable to be set aside or not in the light of the amendment application, which has been allowed and confirmed by me the question of identification with reference to the document of title of 1989 assumes significance for a final adjudication in this matter. I did not direct issuance of Commission when I passed my earlier order mainly on account of the fact

that there are other Commission reports available before court. It was also in the mind of the court that issuance of successive commissions in the very same suit on the very same subject matter will only add confusion rather than helping the court to resolve the dispute. But in a case of this nature, it becomes inevitable to get the points required and mentioned by me in my earlier judgment.

Therefore, I feel this writ petition can be disposed of as follows:(1) I direct the court below to consider the application for setting aside the Commissioners' reports in both the cases and in the event of the court finding that it is to be set aside then necessarily a new Commissioner with rich experience has to be appointed for the purpose. (2) In case the court finds that both the applications are liable to be rejected even in that occasion since additional particulars are necessary in the light of the amended plaint as directed by me in my earlier judgment, the court may remit the matter back to the Commissioner in one of the suits for getting the particulars required and if possible, the remission may be done in the case where a senior counsel has visited the property.(3) In case one report is liable to be set aside and the report is to be in tact, a new Commission has to be issued in the case where the report has been set aside and in such a situation, the court shall appoint the Commissioner, who has visited the property earlier

and whose report has not been set aside to note down the particulars required by both the parties.(4) I earnestly hope that the parties will be able to resolve the disputes and again reiterate that both the parties will be permitted to file work memo before the Commissioner to point out the particulars to be required to be noted. It is also made clear that the court below has to bestow its attention to the maximum to dispose of the matter in accordance with law. The applications be disposed of within one month from today and the suits within two months from the date of receipt of the Commissioner's report.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-